

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DR. BASANT CHATTERJEE,

Plaintiff,

v.

THE MATHEMATICS, CIVICS AND  
SCIENCES CHARTER SCHOOL OF  
PHILADELPHIA, et al.

Defendants.

Civil Action

No. 01-5626

**MEMORANDUM**

July \_\_, 2002.

In this action, pro se plaintiff Dr. Basant Chatterjee has alleged discrimination in employment by defendants The Mathematics, Civics and Sciences Charter School of Philadelphia (“the Charter School”), the School District of Philadelphia (“the District”), and two employees of the Charter School in their individual and official capacities, Ms. Veronica Joyner, Founder and Chief Administrator, and Ms. Hart,<sup>1</sup> Principal. Dr. Chatterjee has alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”); the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (“ADA”); the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.

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<sup>1</sup>Dr. Chatterjee has not supplied the court with Ms. Hart’s first name.

(“ADEA”); 42 U.S.C. §§ 1981 and 1983; the Pennsylvania Human Rights Act, 43 P.S. § 951, et seq. (“PHRA”); and state tort law provisions. The District has filed a motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss all counts and claims against the District.

Currently before the court is Dr. Chatterjee’s motion for appointment of counsel and for enlargement of time in which to respond to District’s motion. In the absence of any objection by defendants to Dr. Chatterjee’s motion for enlargement of time, the motion will be granted as unopposed. For the following reasons, Dr. Chatterjee’s motion for appointment of counsel will be denied.

### **Motion for appointment of counsel**

In considering a motion for appointment of counsel pursuant to 42 U.S.C. § 2000e-5,<sup>2</sup> the court must first “determine[] that the plaintiff’s claim has some merit.” Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997). “[T]hen the district court should consider the following factors:

- (1) the plaintiff’s ability to present his or her own case;
- (2) the complexity of the legal issues;
- (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue such investigation;
- (4) the amount a case is likely to turn on credibility determinations;
- (5) whether the case will require the testimony of expert witnesses;
- (6) whether the plaintiff can attain and afford counsel on his own behalf.”

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<sup>2</sup> Dr. Chatterjee purports to bring the instant motion pursuant to Federal Rule of Civil Procedure 17(c) as well as 42 U.S.C. § 2000e-5. Rule 17(c) is applicable only to infants and incompetent persons, and there is no indication that Dr. Chatterjee is an incompetent as comprehended by this Rule. The court will therefore consider § 2000e-5 to be the basis for the instant motion.

Id.<sup>3</sup>

It bears noting that the instant motion represents Dr. Chatterjee's third application to this court for appointment of counsel—his other attempts having been made in the context of an earlier lawsuit, civil action no. 99-4122. Dr. Chatterjee's prior requests for appointment of counsel were denied. See Docket #9, 99-4122 and Docket #41, 99-4122; see also Chatterjee, 2000 WL 1022979 at \*1-2. Those prior requests were similar to the instant request in two notable—and ultimately dispositive—ways. First of all, both were filed at a very early stage in litigation, and I therefore found even the latter of the two to defy easy evaluation under Parham. I noted: “Unlike Parham, which concerned a directed verdict ruling ... Dr. Chatterjee's claims have barely been articulated; they certainly have not been tested or developed by the general course of litigation, making factors (2)-(5) of Parham's test particularly difficult to evaluate.” Chatterjee, 2000 WL 1022979 at \*1. The same problem presents itself in connection with the instant motion; the merits of Dr. Chatterjee's numerous claims are as yet difficult to assess.

However, the need to evaluate the merits of Dr. Chatterjee's claims in the previous action was obviated by the fact that he had failed to establish his inability to pay for counsel. See id. at \*2. Indeed, the previous denials of appointed counsel were largely based on this factor. In this manner the instant motion is once again similar to its

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<sup>3</sup>In Parham, the Third Circuit articulated standards for the appointment of counsel in cases brought under 28 U.S.C. § 1915. Parham is also applicable to Title VII cases. See Chatterjee v. Philadelphia Federation of Teachers, 2000 WL 1022979 (E.D. Pa. 2000); see also Parham, 126 F.3d at 457-58; Woods v. Bentsen, 889 F. Supp. 179, 183 n.4 (E.D. Pa. 1995).

predecessors. In support of the instant motion, Dr. Chatterjee has no more successfully demonstrated his inability to pay for counsel than he had in the context of the earlier action. Dr. Chatterjee asserts that he has filed a “financial affidavit showing indigence with the United States Court of Appeals for the Third Circuit”; however, neither such affidavit nor the details thereof were provided to this court. In addition, Dr. Chatterjee has not indicated that he has made an effort to secure representation that his finances would accommodate.

Dr. Chatterjee’s motion for appointment of counsel will therefore be denied. An appropriate Order accompanies this Memorandum.

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**ORDER**

July \_\_, 2002.

Plaintiff Dr. Basant Chatterjee has filed a motion for appointment of counsel and a motion for enlargement of time in which he may respond to the pending motion to dismiss by defendant the School District of Philadelphia (“the District”). For the reasons articulated in the accompanying Memorandum, it is hereby ORDERED that:

- (1) Plaintiff’s motion for appointment of counsel is DENIED, and
- (2) Plaintiff’s motion for enlargement of time is GRANTED as unopposed.

Plaintiff may file a response to the District’s motion to dismiss within twenty (20) days of the date of this order.

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Louis H. Pollak, J.